

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 05-111562 RGS

FRED ROHRBACKER
Plaintiff(s)

VS.

MODERN CONTINENTAL COMPANIES, INC.,
HARBOR CRUISES, LLC, BOSTON HARBOR
CRUISES, A JOINT VENTURE, PROVINCETOWN
PUBLIC PIER CORPORATION, AND
PROVINCETOWN-MACMILLAN REALTY

Defendant(s)

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT AND CLAIM FOR JURY TRIAL

Answering to the Plaintiff's Complaint the Defendant, Harbor Cruises, LLC, admits, denies, and alleges as follows:

THE PARTIES

1. The defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in this paragraph.
2. The defendant admits the allegations contained in this paragraph.
3. The defendant admits the allegations contained in this paragraph.
4. The defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in this paragraph.
5. The defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in this paragraph.
6. The defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in this paragraph.
7. The defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in this paragraph.

THE INJURY

8. The defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in this paragraph.
9. The defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in this paragraph.
10. The defendant denies the allegations contained in this paragraph.
11. The defendant denies the allegations contained in this paragraph.

MacMILLAN PIER – OWNERSHIP, OPERATION, AND CONTROL

12. The defendant denies the allegations contained in this paragraph.
13. The defendant denies the allegations contained in this paragraph.
14. The defendant denies the allegations contained in this paragraph.
15. The defendant denies the allegations contained in this paragraph.
16. The defendant denies the allegations contained in this paragraph.
17. The defendant denies the allegations contained in this paragraph.
18. The defendant denies the allegations contained in this paragraph.
19. The defendant denies the allegations contained in this paragraph.
20. The defendant denies the allegations contained in this paragraph.

JURISDICTION

21. This paragraph contains conclusions of law and, as such, the defendant is not required to respond. If it is later determined that the defendant is required to respond, the defendant, Harbor Cruises, LLC, denies the allegations contained in this paragraph.

COUNT I

**FRED ROHRBACKER VS. MODERN CONTINENTAL COMPANIES, INC.
HARBOR CRUISES, LLC AND BOSTON HARBOR CRUISES, A JOINT VENTURE
(negligence)**

22. The defendant realleges and reavers his answers to paragraphs one (1) through twenty-one (21) of the complaint and by reference incorporates them herein.

23. This paragraph contains conclusions of law and, as such, the defendant is not required to respond. If it is later determined that the defendant is required to respond, the defendant, Harbor Cruises, LLC, denies the allegations contained in this paragraph.

24. The defendant denies the allegations contained in this paragraph.

25. The defendant denies the allegations contained in this paragraph.

26. The defendant denies the allegations contained in this paragraph.

COUNT II

FRED ROHRBACKER VS. PRINCETON PUBLIC PIER CORPORATION

This Count does not contain a prayer for relief of the defendant and, as such, the defendant, Harbor Cruises, LLC, is not required to respond. If it is later determined that the defendant is required to respond, the defendant denies the allegations contained in this paragraph.

FIRST DEFENSE

The defendant states pursuant to Federal Rules of Civil Procedure 12(b)(6), the complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

And further answering, the defendant states pursuant to Federal Rules of Civil Procedure 12(b)(4), the process was insufficient.

THIRD DEFENSE

And further answering, the defendant states pursuant to Federal Rules of Civil Procedure 12(b)(5), the service of process on the defendant was insufficient.

FOURTH DEFENSE

And further answering, the defendant states that the plaintiff is barred from recovery because this action was not brought within the time specified by the General Laws of this Commonwealth.

FIFTH DEFENSE

And further answering, the defendant states that the plaintiff is not entitled to maintain this action for the reason that at the time set forth in the complaint, the plaintiff was not in the exercise of due care, and the damages alleged were caused in whole or in part by the negligence of the plaintiff to a degree greater than the alleged negligence of the defendant.

SIXTH DEFENSE

And further answering, the defendant states that the negligence of the plaintiff contributed in some degree to the cause of the accident; wherefore, the damages, if any, awarded to the plaintiff should be reduced in accordance with the law.

SEVENTH DEFENSE

And further answering, the defendant states that the intervening act of a third party was the proximate cause of the alleged damage to the plaintiff.

EIGHTH DEFENSE

And further answering, the defendant states that the plaintiff has failed to give seasonable and proper notice of the injury and/or accident as required by the General Laws of this Commonwealth, all to the great prejudice of the defendant.

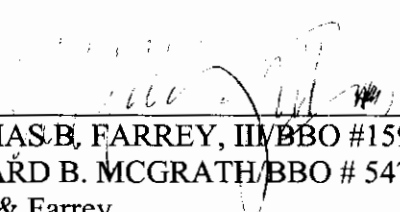
NINTH DEFENSE

And further answering, the defendant states that at the time and place set forth in the complaint, the plaintiff had no right of access to the premises at issue and was a trespasser.

TENTH DEFENSE

And further answering, the defendant says that if the plaintiff suffered the injuries or damages as alleged, such injuries or damages were caused by someone for whose conduct the defendant was not and is not legally responsible.

THE DEFENDANT CLAIM A TRIAL BY JURY ON ALL ISSUES.




THOMAS B. FARREY, III BBO #159880A
EDWARD B. MCGRATH/BBO # 547171
Burns & Farrey
Attorney for the Defendant
150 Federal Street
Boston, Massachusetts 02110
Tel.: 617/479-8635

CERTIFICATE OF SERVICE

I, THOMAS B. FARREY, III/EDWARD B. MCGRATH, hereby certify under the pains and penalties of perjury that I have this day mailed a copy of the within Defendant's Answer to Plaintiff's Complaint, postage prepaid to: **David J. Berg, Esquire, Lattie & Anderson, LLP, 30-31 Union Wharf, Boston, MA 02109; Michael J. Engelberg, Esquire, Kenner, Engelberg, Bratcher & Whalen, 60 State Street, Boston, MA 02109;.**

Dated: September 20, 2005



THOMAS B. FARREY, III
EDWARD B. MCGRATH

TBF/cg
(0000WW-0577 cp# 7)